IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 242 OF 2007

SMT. IVY FERNANDES ... Appellant
Versus
S T A T E THROUGH PUBLIC
PROSECUTOR AND ANR., ... Respondents

Mr. Arun Bras De Sa, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondents.

Coram:- N. A. BRITTO, J.

Date:- 2nd November, 2007

P.C.:-

Heard Mr. Arun Bras De Sa, learned Counsel on behalf of the Applicant and Ms. Winnie Coutinho, learned Public Prosecutor on behalf of the Respondents.

The applicant and her husband Joao Fernandes have a property dispute with Joseph E. Esteves and his sister. An incident between them took place at 12.30 hours regarding which the applicant and her husband filed a complaint which was registered as N.C. under Sections 323, 504 r/w 34 IPC at Agacaim Police Station.

On the same day, another incident took place between them at 4.30 hours which has given rise to registration of Crime No. 197/2007 under Sections 326, 323, 504, 506(ii) r/w 34 IPC, against the applicant and her husband.

The applicant as well as her husband Shri Joao Fernandes approached the Court of Sessions for anticipatory bail and it is stated that their applications came to be rejected by separate orders dated 3-10-2007. The applicant's husband Shri Joao Fernandes has not been arrested till date, as stated, nor has he approached this Court for anticipatory bail.

Although in the incident at 16.30 hours which gave rise to registration of Crime No.197/2007 a "danda" was used by the said Shri Joao Fernandes, the only allegation against the applicant herein is that the applicant assaulted the Complainant's sister with fist blows on her face, bruised her chest with nails and tore her clothes. The provisional medical certificate, prima facie, does not show an offence under Section 326 IPC. Final medical certificate, it is submitted, is yet to be collected. Section 326 IPC therefore would not be attracted to the facts of the case, as disclosed at this stage.

All other offences are bailable. Even assuming an offence under Section 506(ii) has been made non bailable it is not an offence for which custodial interrogation is necessary to investigate the same. Considering the allegations against the applicant herein she could not have been denied anticipatory bail. One fails to understand as to how the learned Sessions Judge could come to a conclusion that the offences allegedly committed by the applicant were serious in nature. Seriousness of an offence cannot be attributed by describing it with a number of adjectives at one's command. Seriousness has to be gauged from the punishment provided for the offences and not otherwise.

Considering the facts of the case, and the allegations against the applicant, the applicant deserves to succeed. In the event of her arrest, the applicant shall be released on bail upon execution of a bond of Rs.5000/- with one surety in the like amount to the satisfaction of the Investigation Officer.

Application disposed off on the above terms. Expedite authenticated copy.

N. A. BRITTO, J.

RD.